IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.580 OF 1997
IN
NOTICE OF MOTION NO.78 OF 1995
IN
SUIT NO.5055 OF 1994

M/s.Vikas Housing Private Limited,
a company, having its registered
office at "Vikas Center", S.V.Road,
(Near Milan Cinema Subway),
Santa-Cruz (West), Mumbai 400 054. Appellant
(original Defendant
No.2)

vs.

1. Goregaon Estates Private Limited,
having its registered office at
47, P. D'Mello Road, K. Parikh
House, Mumbai 400 009.

2. Pravin R. Gupta,

3. Pratap Singh Bohra, both respondent
Nos. 3 and 4 directors of respondent
no.2 carrying on business at 47,
P. D'Mello Road, K.Parikh House,
Bombay 400 009.

4. Mohamed Sarif Sikander Khan,
of Mumbai, Indian Inhabitant,
residing at General Arun Kumar
Vaidya Marg, Goregaon-Mulund Link,
Road, Malad (E), Mumbai 400 097.

5. M/s.Ashish Developers Ltd., a
company incorporated under the
Companies Act, 1956 having its
Registered office at Rolex House,
S.V.Road, Malad (West), Mumbai 400 064.

6. Jankibai Marya Bare,

7. Mali Rama Bare,

8. Zipribai Dhakat Shende,

9. Sita Rama Chavan,

10.Vijay Arjun Katle

All residing at Survey No.266,
(Pt.), C.T.S.No.617, Kanya-cha-
Pada, Goregaon Mulund Link Road,
Goregaon, Mumbai 400 065. Respondents

(Nos. 1 to 3 -
original plaintiffs,
no.4-original
defendant no.1,
no.5-original
defendant no.3, nos.
6 to 10-original
defendants 4 to 8.)

Mr.N.N.Bhadrashete for the appellant.

Mr.N.V.Vimadalal i/b.M/s.Vimadalal & Co. for the respondents 1 to 3.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 19th December 2005

ORAL JUDGMENT (Per R.M.Lodha,J.).

Heard Mr.N.N.Bhadrashete, the learned counsel for the appellant. We also perused the impugned order dated 18th March 1997 passed by the learned motion Judge.

2. The original defendant no.2 is in appeal aggrieved by the order dated 18th March 1997 whereby they have been restrained from claiming any right to the subject properties described firstly and secondly in Exhibit 'A' to the plaint and/or developing or taking any steps for development of the said two properties or putting up any construction work of any nature thereon.

3. The plaintiffs (respondents 1 to 3 herein) filed a

Suit for specific performance of the Contract dated 29th March 1994, delivery of vacant possession of the subject properties and for other reliefs including the relief that it be declared that the second defendant has no right, title, claim or interest in the said properties. It is plaintiffs case that the first defendant is the lessee having right, title and interest in the two immovable properties viz. (i) land bearing survey no.261 (part) C.T.S.No.620 (part), admeasuring about 1000 sq.mtrs. and (ii) land bearing survey no.266 (part), C.T.S.No.617 (part) admeasuring about 1723.2 sq.mtrs. situate at Kanchapada, Malad (East), Mumbai. These two properties are described firstly and secondly in the schedule to Exhibit 'A' annexed to the plaint. According to the plaintiffs, by an agreement recorded in the form of Memorandum of Understanding in writing dated 29th March 1994 the first defendant agreed to assign and transfer his leasehold rights for the development of the said two properties. Formal agreement was to be entered into upon the first plaintiff's being incorporated and upon commencement of the work of compound wall. A sum of Rs.2.5 lakhs was paid to the first defendant on execution of the Memorandum of Understanding. As per the terms of the agreement Rs.10 lacs were to be paid at the time of construction of boundary wall. The total consideration payable by the plaintiffs to the first defendant was at the rate of Rs.400/- per sq.ft. of the

sanctioned plan area and payment schedule was provided in the agreement.

4. It is alleged that after the amount of Rs.2.50 lakhs was paid by the plaintiffs to the first defendant, the first defendant did not do any further act pursuant to the agreement and rather the plaintiffs came to know that the first defendant has transferred and assigned the entire property given in favour of M/s.Ashish Developers Limited (third defendant). The litigation started when the third defendant filed S.C.Suit No.3157/1994 before the Bombay City Civil Court against the defendant no.1 in respect of the property described secondly in Exhibit 'A'. In that Suit, in the notice of motion by way of ad-interim order the first defendant and the plaintiffs were restrained from dealing with, disposing of or creating any third party rights or interest in that property. It is plaintiffs case that the second defendants purported to display their board on the said two properties in apparent violation of the agreement dated 29th March 1994 entered into between the plaintiffs and the first defendant. According to the plaintiffs, the second defendant has no right, title or interest in the said two properties. In the Suit, the plaintiffs took out notice of motion praying for an appointment of Court Receiver in respect of the subject properties and also an order of injunction restraining

the defendant no.1 from assigning, transferring, alienating or encumbering his right, title and interest in the two properties and restraining the defendants 2 and 3 from carrying out any development or putting up any construction and also for restraining the defendant no.2 in claiming any right in the said two properties.

5. It appears that on 23rd December 1994 an ad-interim order came to be passed in the notice of motion by directing the parties to maintain status-quo. Though the defendants 1 to 3 were served with the notice of motion, no reply in opposition to the notice of motion came to be filed by any of these defendants. In the circumstances, as indicated above, the learned motion Judge passed an interim order in the notice of motion.

6. The fact that no reply affidavit was filed by the second defendant in opposition to the notice of motion is not disputed before us. Obviously, therefore, the facts stated in the affidavit in support of notice of motion remained uncontroverted, untraversed and undenied. In this backdrop, if the learned motion Judge granted interim relief in terms of prayers (a) and (b) of the notice of motion, such cannot be faulted.

7. The learned counsel for the appellant sought to contend that even on the basis of the averments made in

the plaint, it cannot be held that any concluded contract came into existence between the plaintiffs and the first defendant. The second defendant is not party to the contract dated 29th March 1994. The first defendant has not chosen to dispute the existence of the agreement dated 29th March 1994 between him and the plaintiffs. In the circumstances, at the prima facie stage, the contention on behalf of the second defendant that there was no binding and concluded contract between the plaintiffs and the first defendant does not deserve to be accepted.

8. The second defendant has failed to show any right, title or interest in the property. In view thereof, the order of temporary injunction granted by the learned motion Judge against the second defendant cannot be faulted.

9. The appeal is dismissed.

No costs.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)